

Recording Requested By:

Mr. Donald Brand

When Recorded, Mail To:

Executive Officer
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY
FORMER VALLEY WATER TREATMENT
612 AND 622 BUENA VISTA AVENUE
STOCKTON, SAN JOAQUIN COUNTY

This Covenant and Environmental Restriction on Property ("Covenant") is made as of the _____ day of _____, 20____ by Mr. Donald Brand ("Covenantor") who is the Owner of record of that certain property situated at 612 and 622 N. Buena Vista Avenue, in the City of Stockton, County of San Joaquin, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board, Central Valley Region ("Regional Water Board"), with reference to the following facts:

- A. The Burdened Property and groundwater underlying it contain salt.
- B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by the use of a former brine pit conducted by Valley Water Treatment. These operations resulted in contamination of soil and groundwater with inorganic chemicals including sodium chloride salt, which constitute hazardous materials as that term is defined in Health & Safety Code section 25260. Remedial activities intended to mitigate the release, included removal of the source, removal of the most severely impacted soil and groundwater, and quarterly monitoring of groundwater quality. The State is prepared to issue a site closure letter on condition that the owner record this restriction on the use of ground water.
- C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via consumption of the impacted groundwater resulting in ingestion of the impacted groundwater by humans. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls on ground water use described in paragraph 3.1(a) of Article III..

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for light industrial business and is adjacent to industrial land uses.

E. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. Covenantor desires and intends that in order to benefit the Regional Water Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from use of ground water that may be impacted by the salt that may have been deposited on portions of the Burdened Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of salt. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that (1) the Restrictions set out herein shall be shown as an exception to title and (2) compliance with the requirements of paragraph 3.3 of Article III will be honored. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Regional Water

Board real property rights, which will run with the land as part of the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

2.1 Regional Water Board. "Board" shall mean the California Regional Water Quality Control Board, Central Valley Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and Covenantor's successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

a. No Owners or Occupants of the Property or any portion thereof shall drill, bore, or otherwise construct, or use a well for the purpose of domestic or potable uses, unless expressly permitted in writing by the Board.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument that shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains salt in soils and in the ground water under the property, and is subject to a deed restriction dated as of _____, 20____, and recorded on _____, 20____, in the Official Records of _____ County, California, as Document No.

_____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Regional Water Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Regional Water Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"
Mr. Donald Brand
105 Wildhorse Valley Road
Novato, CA 94947

If To: " Regional Water Board"
Regional Water Quality Control Board
Central Valley Region
Attention: Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-61145.3

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of San Joaquin within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to affect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: _____

By: _____

Title: _____

Date: _____

California Regional Water Quality Control Board,
Central Valley Region

By: _____

Title: Executive Officer

Date: _____

STATE OF CALIFORNIA)
)
COUNTY OF)

Acknowledgment as to Covenantor

On _____, 20____ before me, _____,

EXHIBIT A

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LEGAL DESCRIPTION

THAT CERTAIN REAL PROPERTY SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, CITY OF STOCKTON, DESCRIBED AS FOLLOWS:

A PORTION OF BLOCKS 5 AND 6 AND A PORTION OF ABANDONED PARK STREET AS SHOWN UPON MAP ENTITLED STOCKTON ACRES SUBDIVISION NO. 10 FILED MARCH 3, 1920 IN BOOK OF MAPS AND PLATS, BOOK 10, PAGE 3, SAN JOAQUIN COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF OAK STREET AS DESCRIBED IN DEED TO THE CITY OF STOCKTON RECORDED NOVEMBER 23, 1948 IN BOOK OF OFFICIAL RECORDS, BOOK 1156, PAGE 471, SAN JOAQUIN COUNTY RECORDS WITH THE EAST LINE OF BUENA VISTA AVENUE AS SHOWN UPON SAID MAP; THENCE SOUTH $11^{\circ} 54' 30''$ EAST ALONG THE EAST LINE OF SAID BUENA VISTA AVENUE, A DISTANCE OF 180.0 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH $78^{\circ} 05' 30''$ EAST A DISTANCE OF 161.02 FEET TO A POINT IN THE WEST LINE OF THE LAND DESCRIBED IN DEED TO HARRY L. PAHL RECORDED NOVEMBER 29, 1951 IN BOOK OF OFFICIAL RECORDS, BOOK 960, PAGE 267, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH $16^{\circ} 45'$ EAST ALONG THE WEST LINE OF SAID PAHL LAND A DISTANCE OF 229.56 FEET TO THE SOUTHWEST CORNER OF SAID LAND BEING ALSO THE SOUTH LINE OF SAID AND ALONG THE SOUTH LINE OF LOT 3 OF SAID BLOCK 6 A DISTANCE OF 180.40 FEET TO A POINT IN THE EAST LINE OF SAID BUENA VISTA AVENUE; THENCE NORTH $11^{\circ} 54' 30''$ WEST ALONG THE EAST LINE OF SAID AVENUE A DISTANCE OF 228.74 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THE FOLLOWING:

A PORTION OF LOTS 2 AND 3 IN BLOCK 6 AS SHOWN UPON MAP ENTITLED STOCKTON ACRES SUBDIVISION NO. 10 FILED FOR RECORD MARCH 3, 1930 IN BOOK OF MAPS AND PLATS, BOOK 10, PAGE 3, SAN JOAQUIN COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID LOT 3 AND THE EAST LINE OF BUENA VISTA AVENUE AS SHOWN UPON SAID MAP; THENCE NORTH $12^{\circ} 05' 30''$ WEST ALONG SAID EAST LINE OF BUENA VISTA AVENUE, 43.46 FEET; THENCE NORTH $85^{\circ} 45'$ EAST 180.49 FEET TO THE WEST LINE OF THE LAND DESCRIBED IN DEED TO HARRY L. PAHL, RECORDED NOVEMBER 29, 1951 IN BOOK OFFICIAL RECORDS, BOOK 960, PAGE 267, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH $16^{\circ} 57'$ EAST ALONG SAID WEST LINE OF PAHL LAND, 18.88 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE SOUTH $77^{\circ} 54'$ WEST ALONG THE SOUTH LINE OF SAID LOTS 2 AND 3, 180.40 FEET TO THE POINT OF BEGINNING.